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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 189.

THE UNITED STATES, EX REL. JAMES WADICK, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND BOARD OF ADMINISTRATORS OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 6, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 189.

THE UNITED STATES, EX REL. JAMES WADICK, PLAINTIFF IN ERROR,

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1 *Petition for a writ of mandamus and order thereon. Filed March 31, 1876.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

UNITED STATES OF AMERICA, EX REL. JAMES Waddick,
versus
THE MAYOR ET AL. OF THE CITY OF NEW Orleans. } No. 7822.

To the honorable the circuit court of the United States for the fifth circuit and district of Louisiana.

The petition of the United States of America in the relation of James Waddick, who is an alien and a citizen of the kingdom of Great Britain, with respect represents:

That on the 19th April, 1875, relator recovered a judgment in this honorable court against the city of New Orleans in the suit No. on the docket for the sum of nine thousand dollars; twenty-seven dollars costs of protest, with interest at the rate of six per centum per annum from 1 May, 1874. That an execution was issued on said judgment, which after due demand of the parties was returned nulla bona.

2 That there is no property act of which said judgment can be made belonging to the said defendant that is subject to seizure under execution, and relator cannot make his money except this the writ of mandamus to be issued by this honorable court ordering the levy and collection of a tax for that purpose. That the mayor and administrators of New Orleans, who represent and exercise the corporate powers of the city of New Orleans, refuse to levy and collect a tax to pay the said judgment of relator and put him at defiance, and he is entirely without remedy to collect said judgment by the ordinary levy of execution upon the property of said corporation.

That the mayor of New Orleans is Charles J. Leeds; the administrators are Edward Pilsbury, administrator of finance; James G. Brown, administrator of accounts; Leon Bertoli, administrator of water works and public buildings; Denis McCarthy, administrator of police; J. O. Landry, administrator of commerce; P. L. Bouny, administrator of assessments, and E. A. Burke, administrator of improvements, who are now in possession of their said offices and in the full exercise of the powers thereof.

3 Wherefore petitioner prays that a writ of mandamus issue, ordering the said Charles J. Leeds, mayor of the city of New Orleans, and Edward Pillsbury, James G. Brown, Leon Bertoli, Denis McCarthy, J. O. Landry, P. L. Bouny, and E. A. Burke, administrators of said city, be ordered to levy and collect a tax sufficient to pay the aforesaid judgment, interest, and costs; when collected to pay the same to relator in satisfaction of his said judgment, interest, and costs, and for general relief.

(Signed) SEMMES & MOTT,
Att'ys for Relator.

Let the defendants show cause on the 15 April, 1876, at 11 a. m., why a writ of mandamus should not issue as herein prayed for.

March 31, 1876.

(Signed) W. B. WOODS,
U. S. Judge.

Marshal's return.

Received April 1, 1876, by the U. S. marshal. On the 3rd day of April, 1876, served a copy hereof on C. J. Leeds by handing the same to him in person in this city.

(Signed) S. B. PACKARD,
U. S. Marshal.
By S. W. REED,
Deputy.

Notice of application for mandamus issued, returned, & filed April 1, 1876.

4 United States circuit court, fifth circuit, district of Louisiana.

CLERK'S OFFICE, *March 31st*, 1876.

UNITED STATES EX RELATOR, JAMES WADDICK,
vs.
THE MAYOR ET AL. OF NEW ORLEANS. } No. 7822.

To Edward Pillsbury, adm'r of finance, James G. Brown, adm'r of accounts, Leon Bertoli, adm'r of water works and public buildings, Dennis McCarthy, adm'r of police, J. O. Landry, adm'r of commerce, P. L. Bouny, adm'r of assessments, E. A. Burke, adm'r of improvements.

You are hereby notified that upon the application for a mandamus as prayed for in the above-entitled cause the court has given the following order:

Let the defendant show cause on the 15th April, 1876, at 11 a. m. why a writ of mandamus should not issue as herein prayed for.

March 31st, 1876.

(Signed) W. B. WOODS, *Judge.*

Attest:

F. B. VINOT,
D'y Cl'k.

Marshal's return.

5 Received April 1, 1876, by the U. S. marshal, and on the 3rd day of April, 1876, served a copy hereof on the within named as follows: Ed. Pilsbury, p'lly, James G. Brown, p'lly, Leon Bertoli, p'lly, Dennis McCarthy, p'lly, J. O. Landry, p'lly, D. A. Burke, p'lly, P. L. Bouny by leaving the same with his clerk, Cha's Fletcher, at his office.

(Signed) S. B. PACKARD,
U. S. Marshal.
By S. W. REED,
Deputy.

Answer.—Filed April 19th, 1876.

U. S. circuit court.

THE UNITED STATES OF AMERICA, ON THE relation of James Waddick,
vs.
CHARLES J. LEEDS, MAYOR OF THE CITY OF New Orleans, et als. } No.

Now comes Charles J. Leeds, mayor of the city of New Orleans, Ed-

ward Pilsbury, James G. Brown, Leon Bertoli, Denis McCarthy, J. O. Landry, P. L. Bouny, and E. A. Burke, administrator, respectively, of finance, of accounts, of water works, of police, of commerce, of assessments, and of improvements of the said city, and for answer to the petition of the relator, James Waddick, herein filed, they allege and show:

6 That they admit that the said relator has recovered judgment against the city of New Orleans; that an execution has issued on said judgment, and has been returned no property found, as more fully appears by reference to said judgment and execution and return thereon in said suit of James Waddick vs. The City of New Orleans, No. of the docket of this court, specially referred to for fuller explanation and greater certainty.

And these respondents, further answering, say that said judgment was recovered against certain bonds made by the city of New Orleans for one thousand dollars each, issued by the said city to the New Orleans, Jackson & Great Northern R. R. Company, under the authority of the act of the legislature of Louisiana No. , approved March 15th, 1854.

And further answering, these respondents say that no tax whatever for the payment of the principal of said bonds is directed to be levied or collected by the said act, or by any other act of the legislature or other provisions of law; that said judgment is recovered for the principal alone of said bonds, and these respondents refer to said act, and especially to the 2d section thereof, to show that no provision is made for any tax whatever for the payment of the principal

7 of said bonds thereof or for any part thereof.

Forasmuch, therefore, as the laws of Louisiana have directed no such tax to be levied or collected, and have made no provision by taxation to pay said principal, for which said judgment was recovered, these respondents are without legal authority to levy and collect such tax, and have no duty to perform in the premises, and this honorable court is without authority to grant the writ of mandamus prayed for; that provision has been made in the city budget of this year, out of the back taxes, for the payment of the interest on all the bonds of said city required to be provided for.

Wherefore these respondents pray for judgment in their favor, that the petition of the relator be dismissed, and for general relief.

(Signed) FINNEY & MILLER,
" B. F. JONAS,
Att'ys for Respondents.

Personally appeared Charles J. Leeds, mayor of the city of New Orleans, Edward Pilsbury, James G. Brown, Leon Bertoli, Denis McCarthy, J. O. Landry, P. L. Bouny, and E. A. Burke, administrators, respectively, of finance, of accounts, of water works, of police, of commerce, of assessments, and of improvements, who, being duly

8 sworn, depose and say that all the facts and allegations stated in the foregoing answer are true and correct.

(Signed) E. PILSBURY, *Ad. F.*
" J. O. LANDRY,
Adm'r of Commerce.
" J. G. BROWN,
Adm'r Pub. Accounts.

Sworn to and subscribed before me this 19th day of April, A. D. 1876.
[SEAL.] W. T. HOUSTON,
First Justice of the Peace for the Parish of Orleans.

Judgment referred to in the answer.

Circuit court of the United States. Fifth circuit and district of Louisiana. November term, 1874.

NEW ORLEANS, *Monday, April 19th*, 1875.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

JA'S WADICK
vs.
THE CITY OF NEW ORLEANS. } No. 7254.

By reason of the verdict, and in accordance therewith, it is ordered, adjudged, and decreed that the plaintiff, James Wadick, do have
9 and recover from the defendant, The City of New Orleans, the sum of nine thousand dollars, with 6% interest thereon from 1st May, 1874, till paid, $27\frac{50}{100}$ costs of protest, and costs of suit.
Judgment rendered April 19th, 1875.
Judgment signed April 23rd, 1875.
(Signed) W. B. WOODS.
Judge.

Writ of fieri facias referred to in the answer.—Issued Nov. 18th, 1875; returned & filed February 11th, 1876.

JA'S WADICK
vs.
CITY OF NEW ORLEANS. } No. 7254. Alias fi. fa.

UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana.

The President of the United States to the marshal of the district of Louisiana or his lawful deputy, greeting:

You are hereby commanded that you demand from the city of New Orleans the sum of nine thousand dollars ($9,000), with 6% interest thereon from 1st May, 1874, till paid, $27.50 costs of protest and costs of suit; clerk's costs $24, atty's fee $20, cash, which James
10 Wadick lately recovered by judgment of the circuit court of the United States for the 5th circuit and district of Louisiana, and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said city of New Orleans, in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said city of New Orleans, in your district, whereof it was owner on the 23d day of April, 1875, into whose hands soever the same may have come, and that you have those moneys before our said court to render to the said James Wadick for the judgment aforesaid on the 70th day from the date hereof, together with this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of November, A. D. 1875, and 100th year of the Independence of the United States.

[SEAL.] (Signed) F. B. VINOT,
Dy Clk.

Marshal's return.

Received Nov. 18th, 1875, by the United States marshal, and no property found.

11 (Signed) S. B. PACKARD,
U. S. Marshal,
By C. R. STEELE,
Deputy.

Hearing & submission of application.—Extract from the minutes, November term, 1875.

NEW ORLEANS, *Wednesday, April 19th,* 1876.

Court met pursuant to adjournment.
Present, Hon. E. C. Billings, district judge.

U. S. EX RELATION JA'S WADICK
vs.
CITY OF NEW ORLEANS. } No. 7822.

The application for writs of mandamus in above case was called for hearing. Mess'rs Semmes & Mott, Clarke, Bayne & Renshaw, Labatt, Aroni & Clinton, & H. B. Kelly for relators, B. F. Jonas & Finney & Miller for defendants. And after hearing the pleadings and argument the court took time to advise.

Order for reargument on the application.—Extract from minutes of April 29th, 1876.

U. S. EX RELATION JA'S WADICK
vs.
CITY OF NEW ORLEANS. } No. 7822.

12 Ordered that a reargument be had in the above case on Wednesday, May 3d, 1876, at 11 a. m. Counsel being present taking notice hereof.

Reargument & submission of application.—Extract from minutes, May 3d, 1876.

U. S. EX RELATION JA'S WADICK
vs.
CITY OF NEW ORLEANS. } No. 7822.

After hearing further argument by Mess'rs Semmes & Mott, Tho's Allen Clarke, Labatt, Aroni & Clinton, Henry C. Miller, and B. F. Jonas, the court took time to advise.

Demurrer to the answer.—Filed May 6, 1876.

Circuit court of the United States, district for Louisiana.

THE U. S. ON THE RELATION OF JA'S WADICK
vs.
CITY OF NEW ORLEANS. } No. 7822.

The demurrer of the United States of America on the relation of James Wadick, plaintiff, to the answer of the City of New Orleans, the above-named defendant.

This plaintiff, by protestation, not confessing all or any of the matters

and things in the defendant's answer contained to be true in such
13 manner and form as the same is therein set forth and alleged, doth demur to said answer, and for cause of demurrer showeth that the defendant hath not made or stated such a defence as to defeat or prevent the right to a mandamus claimed by the plaintiff; and plaintiff hereby prays the judgment of the court as to the answer they have so demurred to as aforesaid, and that said answer be rejected, and that plaintiff have his proper costs and charges.

(Signed) SEMMES & MOTT,
Of Counsel.

We certify that in our opinion the foregoing demurrer is well founded in law.

(Signed) SEMMES & MOTT,
Of Counsel.

Judgment.—Extract from judgment book, April term, 1876.

Circuit court of the United States, fifth circuit and district of Louisiana

NEW ORLEANS, *Monday, May 8th*, 1876.

Court met pursuant to adjournment.
Present, Hon. Edward C. Billings, district judge.

UNITED STATES, EX RELATION JAMES WADICK,
vs.
THE MAYOR ET AL. OF NEW ORLEANS. } No. 7822.

14 This case came on to be heard upon the application for a writ of mandamus and was argued by counsel. On consideration whereof, it is ordered by the court that complainant's demurrer to the answer be overruled and that a writ of mandamus be refused with costs.

Judgment rendered May 8th, 1876.
Judgment signed May 26th, 1876.

(Signed) EDWARD C. BILLINGS,
Judge.

Petition & order for writ of error.—Filed June 8th, 1876.

In the circuit court of the United States for the fifth circuit and district of Louisiana.

THE UNITED STATES OF AMERICA, ON THE relation of James Wadick,
vs.
THE MAYOR & ALS. OF THE CITY OF NEW Orleans. } No. 7822.

The petition of the United States of America, on the relation of James Wadick, with respect represents:

That on the 8th day of May, 1876, in the above-entitled cause, numbered as aforesaid, a judgment has been rendered against petitioner by this honorable court in favor of Cha's J. Leeds, mayor of the city of New Orleans; Edward Pilsbury, administrator of finance of the city of New Orleans; Leon Bertoli, administrator of water-works & public
15 buildings of the city of New Orleans; James G. Brown, adminis-

trator of accounts of the city of New Orleans; Denis McCarthy, administrator of police of the city of New Orleans; J. O. Landry, administrator of commerce of the city of New Orleans; R. L. Bouny, administrator of assessments of the city of New Orleans; and E. A. Burke, administrator of improvements of the city of New Orleans, which was signed on the 26th day of May, 1876. Your petitioner considers that manifest error hath happened, to the great injury and damage of petitioner; and feeling aggrieved by said judgment, he desires to prosecute a writ of error from the aforesaid judgment before the Supreme Court of the United States.

Wherefore he prays that a writ of error be allowed him from the judgment heretofore referred to, returnable before the Supreme Court of the United States in accordance with law, upon petitioner's giving bond in the sum of two hundred and fifty dollars, conditioned according to law.

(Signed) THO'S J. SEMMES,
" ROB'T MOTT,
Atty's of Pt's.

Allowed.
(Signed) EDWARD C. BILLINGS,
Judge.

Bond for writ of error.—Filed June 8th, 1876.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The United States of
16 America, on the relation of James Wadick and W'm A. Phelps, are held and firmly bound, jointly and severally, unto Cha's J. Leeds, the mayor; Edward Pilsbury, administrator of finance; James G. Brown, administrator of accounts; Leon Bertoli, administrator of water-works and public buildings; Denis McCarthy, administrator of police; J. O. Landry, administrator of commerce; P. L. Bouny, administrator of assessments; and E. A. Burke, administrator of improvements, the same being the mayor and administrators of the city of New Orleans, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said mayor and administrators of the city of New Orleans, their successors and assigns, for which payment well & truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated the 8th day of June, in the year of our Lord eighteen hundred and seventy-six.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said court, wherein the United States of America, on the re-
lation of James Wadick, were plaintiffs, and the mayor and ad-
17 ministrators of the city of New Orleans were defendants, and a final judgment was rendered against the United States of America on the relation of James Wadick, and the said United States of America, on the relation of James Wadick, having obtained a writ of error and filed a copy thereof in the clerk's office of said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to said mayor and administrators of the city of New Orleans, citing and admonishing them to be and appear at a Supreme Court of the United to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that we, the above bounded United States of America, on the relation of James Wadick, will well and truly pay the defendants in said writ of error all such dam-

ages as they may recover against us in case it should be decided that the said writ of error was wrongfully obtained.

(Signed) JAMES WADICK,
By ROB'T MOTT, [L. S.]
His Att'y at Law.

(Signed) W'M A. PHELPS. [L. S.]

Signed, sealed, and delivered in the presence of—

Approved.

(Signed) EDWARD C. BILLINGS,
Judge.

18 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 17 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of the United States ex rel. James Wadick versus The Mayor et al. of the city of New Orleans, No. 7822 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans this 9th day of September, A. D. 1876.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 9th day of September, A. D. 1876.

EDWARD C. BILLINGS,
Judge.

19 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States of America on the relation of James Wadick and Charles J. Leeds, the mayor; Edward Pillsbury, administrator of finance; James G. Brown, administrator of accounts; Leon Bertoli, administrator of water-works & public buildings; Denis McCarthy, administrator of police; J. O. Landry, administrator of commerce; P. L. Bouny, administrator of assessments; and E. A. Burke, administrator of improvements, the same being the mayor and administrators of the city of New Orleans, No. 7822 on the docket thereof, a

manifest error hath happened to the great damage of the said United States of America on the relation of James Wadick, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 8th day of June, in the *the* year of our Lord one thousand eight hundred and seventy-six.

[SEAL.]

F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louis ana.

(Indorsed:) United States circuit court. No. 7822. United States ex rel. James Wadick, plaintiff in error, versus The Mayor & als. of city of New Orleans, defendants in error. Writ of error. Filed June 8th, 1876. F. B. Vinot, d'y cl'k.

20 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Charles J. Leeds, the mayor; Edward Pillsbury, administrator of finance; James G. Brown, administrator of accounts; Leon Bertoli, administrator of water-works and public buildings; Denis McCarthy, administrator of police; J. O. Landry, administrator of commerce; P. L. Bouny, administrator of assessments, and E. A. Burke, administrator of improvements, the same being the mayor and administrators of the city of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the United States of America, on the relation of James Wadick, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 9th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS,
Judge.

(Indorsed:) United States circuit court. No. 7822. United States ex rel. James Wadick, plaintiffs in error, vs. The Mayor et als. of the city of New Orleans, defendants in error. Citation.

Marshal's return.

Service accepted & citation waived.

B. F. JONAS,
Att'y for Defendants.

JUNE 9TH, '76.

(Indorsement on cover:) No. 189. U. States ex rel. James Wadick, plaintiff in error, vs. The Mayor & Board of Administrators of the City of New Orleans. Louisiana C. C. U. S. Filed 6th October, 1876.

UNITED STATES SUPREME COURT.

No. 189.

THE UNITED STATES, Ex. REL., JAMES WADDICK,

vs.

THE CITY OF NEW ORLEANS.

Brief for Defendant.

This case involves the same issue as No. 150, to the brief in which we refer—and ask for the affirmance of the judgment.

Respectfully submitted,

B. F. JONAS,

H. C. MILLER.

Of Counsel for City.